UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/221,656	12/23/1998	TSUKASA YAMAMOTO		4269

7590 04/11/2005

JOSEPH R. KEATING, ESQ.
KEATING & BENNETT, LLP
10400 EATON PLACE, SUITE 312
FAIRFAX, VA 22030

EXAMINER	
POINVIL, FRANTZY	

ART UNIT	PAPER NUMBER
3628	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/221,656
Filing Date: December 23, 1998
Appellant(s): YAMAMOTO ET AL.

Joseph R. Keating
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/12/2005.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The Brief contains a statement that there are no other Appeals and Interferences that relate to the application.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grounds of Rejection to Be Reviewed on Appeal

The appellant's statement on the grounds of rejection to be reviewed on appeal is correct.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,101,352	REMBERT	3-1992
4,827,423	BEASLEY ET AL.	5-1989

Jim Brown, "Software links POS with multiple nets", Network World;, October 17,1988; 5, 42; ABI/Inform Global, page 33 and 35.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

> The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8-34, 40-53, 55 and 59-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jim Brown ("Software links POS with multiple nets"), Rembert ("US Patent No. 5,101,352) and Beasley et al. (US Patent No. 4,827,423).

As per claims 8, 22, 28, 33, 50, 52, and 71, Brown discloses a software system for linking a plurality of POS together. Brown states that the software "StoreNet/2 uses a polling algorithm to collect data from attached POS devices" and transmits the collected data "to transaction process application such as price lookup, running on the Stratus or to another application running on the corporate host such as an inventory management". Brown further states "through the software, the host system can download data, such as price lookup files, to remote POS

controllers. Applicant is directed to the article. Thus, Brown clearly teaches "a plurality of point of sales terminals each including an electronic interface which obtains sales information concerning of a plurality of goods. Thus, the host computer described by Brown receives the sales information from the point of sales terminals. Brown does not specific teach details of an inventory management system. However, the Examiner asserts that the inventory management system of Brown would have included a production size determining unit for determining a production quantity to be produced in the future for the plurality of goods based on the sales information received from the plurality of point of sales terminals, and an output device for outputting data indicative of the production quantity determined by the production sized determining unit as such is the main function of an inventory management system. Rembert teaches such an inventory management system. See column 3, lines 1-39 of Rembert. Rembert also states that the production information includes data for sales orders, inventory items, purchase orders, estimates and work orders. Note column 129, lines 38-49 of Rembert. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the inventory management system of Rembert into the system of Brown in order to detail out inventory data and requirements of a particular product. The combination of Brown and Rembert does not explicitly state a manufacturing unit for manufacturing the plurality of goods based on the sales information which is collected at the plurality of point of sales terminals and transmitted from the plurality of point of sales terminal to the main production controller. However, it is noted as products are being sold and the inventory is being depleted, more products would be needed as determined by the inventory management system. Thus producing the needed products would have been obvious to one of ordinary skill in the art for replenishment and restocking purposes.

A manufacturing unit would have then been necessary to provide these goods to the stores ordering needed goods. Beasley et al. disclose a computer integrated manufacturing system for scheduling data relating to product production by a machine. See the abstract of Beasley et al. The system comprises a manufacturing unit that determines the production unit for manufacturing the production quantity of the plurality of goods in response to receiving output data indicative of the production quantity. See column 8, line 20 to column 12, line 41 of Beasley et al. It would have been obvious to the skilled artisan to incorporate the teaching of Beasley et al into the combination of Brown and Rembert in order to manufacture a received quantity of products for accurate and timely producing and delivering of products to the plurality of point of sales terminals.

As per claim 9, Brown teaches connecting the plurality of point of sales terminals to a main control unit. Note the article.

As per claims 10-12, Brown teaches interconnecting the plurality of point of sales terminals and the main control unit using a communications network. Having a public network for interconnecting the plurality of point of sales terminals and the main controller and a public network for interconnecting the main control unit and the production unit would have been obvious to one of ordinary skill in the art in the combination of Brown, Rembert and Beasley et al. for instant communication purposes and for the rapid receipt and transmission of information.

As per claim 13, the point of sales terminals are located at least one location where the plurality of goods are sold.

As per claim 14, the main control unit of Rembert comprises a host computer and the production size determining unit is a computer program being executed on the host computer.

As per claims 15-17 and 29, note the teachings of Rembert and column 17, column 37, lines 32-68 and column 48, lines 8-32 of Beasley et al.

As per claim 18, the name of the goods sold and the quantity of the goods sold are necessary in the combined teachings above.

As per claim 19, Brown teaches the sales information is directly transmitted from the point of sales terminals to the main control unit. Note the article of Brown.

As per claims 20-21, transmitting the sales information to the main control unit at a periodic time interval or at a daily interval would have been obvious to one of ordinary skill in the art for inventory control and restocking purposes.

As per claim 23, note column 9, lines 44-53 and columns 11 and 12 of Rembert.

As per claims 24 and 25, having a public communications network connecting the point of sales to the flexible manufacturing subsystem would have been obvious to one of ordinary skill in the art in the combination of Brown, Rembert and Beasley et al. for instant communication purposes and the rapid receipt and transmission of information.

As per claim 26, note the teachings of Rembert and column 17, column 37, lines 32-68 and column 48, lines 8-32 of Beasley et al.

As per claim 27, the system of Brown includes a host having means for receiving information from the point of sales terminals, a central processor for executing a program to determine the production quantity of the products to be produced in the future (as noted in Rembert) and an output device for outputting the production quantity to the manufacturing controller (of Beasley et al.).

As per claims 30-31, transmitting the sales information via a public information network in the combined teachings of Brown, Rembert and Beasley et al would have been obvious to one of ordinary skill in the art for instant communication purposes and the rapid receipt and transmission of information.

As per claim 32, note columns 8-9 of Beasley et al.

As per claims 34 and 53, the POS are connected through a communication network. Note the teachings of Brown.

As per claim 40, in the combination of Brown, Rembert and Beasley et al., an inventory control system exists. As products are sold, and an increase in demand is also being made, then the required additional units would have been to subtract an inventory quantity and past additional production request quantity from future demand. Updating the past additional production request quantity to reflect the calculated required size of additional production would have been obvious to one of ordinary skill in the art to do in the combination of Brown, Rembert and Beasley et al. The motivation would have been to update the system of a newly amount of a given product in order to satisfy customers' demands.

As per claims 41-44, Rembert teaches that required materials are based on either one of two modes, net change or regenerative. Net change is based on changes in materials and capacity requirements that result from changes in demand, supply and on hand balances which have occurred since the last time the MRP system was updated. Regenerative is placed on deleted and rebuilt of MRP from existing orders, purchase orders and work orders. Note column 11, line 40 to column 12, line 46 of Rembert. Determining required raw quantities based on at least order backlog quantities of raw materials for which an order has been sent to a supplier and

the supplier has acknowledged receipt of the order would have been obvious to one of ordinary skill in the art because a backlog quantity is similar to an indication that an order for raw materials is late and not in time which may result in the store having a low quantity of that needed product. When ordering or determining raw materials, it would have been obvious to one of ordinary skill in the art to take into consideration the amount that was previously ordered and not yet received (backlog quantities) and the currently desired amount so that the appropriate amount for the production of a certain good is always ordered, thereby preparing for a production lead time and providing an appropriate schedule for the production or receipt of the particular product or good. In so doing, the order backlog would have been modified and a correspondence would have been sent to the supplier. Depending upon the status of the order by the supplier, the appropriate modification would have been made so that the currently needed raw materials are always ordered.

As per claims 45 and 66, note column 6, lines 8-17 and column 10, lines 267-34 of Rembert.

As per claims 46 and 67, placing orders for raw materials in a sequence determined by the assembling and processing steps for manufacturing the good would have been obvious to one of ordinary skill in the art in the combination of Brown, Rembert and Beasley et al in order to assure that items are timely available based on the manufacturing stage of a product.

As per claims 47 and 68, the combination of Brown, Rembert and Beasley et al does not explicitly state the multiplying step. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to note that if the amount of

raw material for one unit is known then the required quantities of raw materials for a number of additional units would have been a multiplication factor.

As per claims 48-49 and 69-70, note column 6, lines 8-17 and column 10, lines 26-34 of Rembert.

As per claim 55, Rembert discloses providing a product category. Note column 25, lines 39-55 of Rembert.

As per claim 59, most inventory control systems include inventory quantity data and past additional production request quantity data.

As per claims 60-64, applicant is directed to the rejection of claims 40-44 above.

As per claim 65, applicant is directed to column 25, lines 39-55 of Rembert.

As per claims 51, 72 and 73, see columns 9-10 and column 3, lines 52-67 of Beasley et al.

Allowable subject

The prior art taken alone or in combination failed to teach or suggest features recited in claims 35-39, 54 and 56-58.

Claims 35-39, 54 and 56-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments:

The Appellant argues that the Brown, Rembert or Beasley et al taken alone or in combination fails to teach or suggest the claimed invention.

In response, Brown is directed to a computerized system wherein a retail store selling a plurality of products contains a plurality of point of sales (POS) stores selling product information or sales information concerning the sales of a plurality of goods. The plurality of POS are linked to an In-Store controller for receiving sales information from the POS. See column 1, paragraph 4 on the first page of the article by Brown. These information are later sent to a an inventory management computer. See column 1, paragraph 5 on the first page of the article. Thus, as products are being sold, there would be depletion and these products must be re-supplied or restocked to those stores selling these products. The inventory management of Brown would have then determined a quantity of needed products since this is the main function of an inventory system. The inventory management of Brown performs similarly as the claimed main control unit and main production controller which receives sales information from the point of sales terminals, determines the production quantity of these needed goods. It should be noted that the POS or the stores noted in Brown as most retail stores do not deal with the manufacturing of the goods they sell. These stores usually send the quantity of needed goods information to a distributor or manufacturer or any entity or provider of the goods or products they sell. The quantity need is based on the selling amount or quantity sold. Brown further teaches connecting their system to other networks. See page 1, column 2 of Brown. Thus Brown would have transmitted these information to a manufacturing unit and/or a production unit.

Rembert is directed to an integrated material requirements planning system for distributors and manufacturers. See the abstract of Rembert. The system of Rembert receives order information for manufacturing one or more goods from a customer. See the abstract and column 3, lines 1-24 of Rembert.

Beasley et al controls the manufacturing of goods/products. See the abstract and column 2, lines 7-60 of Beasley et al.

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Brown, Rembert and Beasley et al in order to produce needed goods/products at retail stores, thereby maintaining a level of needed goods to be sold.

Appellant then argues that Rembert is not directed to an inventory management system that could be used with the point of sales terminals and retail system disclosed in Brown.

In response, the Examiner disagrees. In Rembert, it does not matter where or from which type of entities that certain products/goods are to be manufactured or produced. One of ordinary skill in the art in need of products to restock their inventory as that of Brown would have certainly found it obvious to contact Rembert for the provision of these goods/products. As per the appellant's argument that anyone who only receives sales orders, inventory items, purchase orders, estimates and work orders for a plurality of goods will not and could not have any idea about the point of sales information concerning individual sales of a plurality of products collected at a plurality of point of sales terminals because sales information from the point of sale is not conveyed in sales order, inventory items, purchase orders, estimates and work orders, the Examiner agrees. The Examiner has applied Rembert to show the process of controlling the

manufacturing of products/goods from an order received from a customer. The order received from the customer clearly relates to sales information and to inventory data as determined by their point of sales system. The sales order, inventory items, purchase orders, estimates and work orders discussed by the Appellant relate to the sales order and inventory items of other goods that the manufacturers of Rembert will need for the manufacturing of the items needed in the stores of Brown as determined by their inventory system. Similarly, the purchase orders, estimates and work orders also relate to other goods that the manufacturer of Rembert will need for the manufacturing of the products/goods needed in the system of Brown.

Thus, in any condition it should be noted that in most inventory systems, as items are being consumed or used, there would be a need for the order or purchase of these consumed or used items. Brown needs goods/products that are sold at their stores as determined in their inventory system. Likewise, Rembert makes purchase orders, estimates, sales orders and work orders for needed items. Thus, the notion of determining a quantity of needed items whether to produce, manufacture or purchase is not novel or unobvious as such is routinely done in an environment where products are being consumed or used.

Appellant then argues that not portion of the material requirements planning system of Rembert teaches or suggests the feature of a "flexible manufacturing system" including "a main controller for receiving the information from the point of sales subsystem and for determining a production quantity of the plurality of products to be produced in the future based on the sales information received from the point of sales subsystem" and "a manufacturing controller for receiving the production quantity from the main controller and for controlling a plurality of

production drive units for controlling manufacture of the production quantity of the plurality of products determined by the main controller".

In response the combination of Rembert and Beasley et al. teach the various claimed functions of a flexible manufacturer system, a main controller and a manufacturing controller. Applicant is directed to column 8, line 46 to column 9, line 53 and column 30, lines 10-26 of Rembert and column 26, lines 55-60 and column 30, line 9 to column 32, line 51 of Beasley et al.

Appellant then argues that the Examiner has failed to provide proper motivation for combining Brown and Rembert, and for combining Beasley et al with Brown and Rembert..

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, in the system of Brown, orders may be entered for items which are drop -shipped by vendors. Column 5, lines 53-56 of Rembert. These vendors have POS terminals linked to a controller for tracking inventory of items and the quantity of items to be ordered or needed to order. The system of Rembert controls the production of received work orders to be produced and or manufactured. See column 6, line 54 to column 7, line 5 of Rembert.

It would have been obvious to one of ordinary skill in the art to incorporate the inventory management system of Rembert into the system of Brown in order to detail out inventory data

and requirements of a particular product. The combination of Brown and Rembert does not specifically detail a manufacturing controller. Beasley et al is directed to a computer integrated system for controlling the production quantity of many different products. See column 2, lines 7-12 of Beasley et al. In the system of Beasley et al there includes a production unit which manufactures the production quantity of a plurality of different goods or products. See column 3, lines 52-65.

It would have been obvious to the skilled artisan to incorporate the teaching of Beasley et al into the combination of Brown and Rembert in order to manufacture a received quantity of products for accurate and timely producing and delivering of products to the plurality of point of sales terminals.

Appellant then argues that the Examiner has based the rejection on a hindsight reconstruction of the claimed invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Appellant argues that the Examiner has relied upon his own assessment and not on factual findings.

The Examiner disagrees with the appellant's and directs the appellant to the above response in which it is clearly shown that the Examiner has relied upon the combination of Brown, Rembert and Beasley et al as a proper basis for the rejection and also in responding to the appellant's arguments.

Appellant has then commented that the Examiner has failed to consider or provide arguments relating to the Non-Obviousness of the rejection based on the four references the appellant has submitted, namely,

1) "Kanebo Ltd, "Strategic Operations: Competing Through Capabilities, published by the Harvard Business School;

2) "Direct Linkage With Increased Information Systemization," published on August 18, 1990 in the Nikkei Sangyo Shimbun;

3) "Kanebo Directly Links POS with FMS: A System for Cosmetics With Six Times the Productivity", published on July 31, 1990 in Nikkei Sangyo Shimbun; and

4) "Additional Production of Seasonal Merchandise Become Flexible./ published on August 3, 2002 in Nikkei Kelzai Shimbun.

In response, it is noted that the submitted references describe the work or the advantage of the instant invention of the instant assignee, "Kaneko Ltd." . There are no ties between the claimed invention and the description provided in the submitted references. Thus, there is not a

showing of Non-Obviousness present in these references as they are not related to the instant claims.

Furthermore, it should be noted that in the showing of obviousness, the prior art must firstly be considered. These references relate to the applicant's work are noted as secondary considerations and give rise to unexpected results but do not show any nexus with the claimed invention nor commensurate in scope with the claimed invention.

Therefore, the submitted references are not probative in showing nonobviousness.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Frantzy Poinvil
AU 3628

April 4, 2005

Conferees

Hung S. Sough

Nga Nguyen

JOSEPH R. KEATING, ESQ.
KEATING & BENNETT, LLP
10400 EATON PLACE, SUITE 312
FAIRFAX, VA 22030